

MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Emily (Sollars) Farmer,
Appellant-Respondent,

v.

Lee Shane Sollars,
Appellee-Petitioner.

November 10, 2021
Court of Appeals Case No.
21A-DC-868
Appeal from the
Hancock Circuit Court
The Honorable
R. Scott Sirk, Judge
Trial Court Cause No.
30C01-1506-DR-954

Molter, Judge.

- [1] For a child custody dispute, a trial court must make the initial custody determination based on the child's best interests after weighing a number of

statutory factors and any other factors the court deems relevant. When later modifying custody, the trial court likewise determines the child’s best interests, but the General Assembly has imposed an additional requirement at that stage: the trial court can modify custody only if it finds there has been a “substantial change” related to the statutory considerations since the prior order. The requirement reflects an acknowledgment that children generally benefit from a stable environment and routine.

- [2] Here, the trial court granted a petition to modify custody without finding there had been a substantial change. We therefore reverse the portion of the trial court’s order pertaining to the custody modification and remand with instructions.

Facts and Procedural History

- [3] Emily (Sollars) Farmer (“Mother”) and Lee Shane Sollars (“Father”) have one child together, V.S. (“Child”), who is 13 years old. About five years ago, on August 31, 2016, the trial court issued an order establishing child support, parenting time, and child custody. Appellant’s App. Vol. 2 at 32. The parties shared joint legal and physical custody of Child, exercising parenting time on a week-to-week basis with the exchanges occurring on Sunday. They were also entitled to an overnight visit with Child on Thursday of the other party’s week.
- [4] On August 30, 2020, Father picked up Child for parenting time. Around this time, Child—a highly accomplished equestrian—was scheduled to participate in a charity horse show which Mother’s family organized. Shortly before the event,

Child told Mother that she was not going to participate and instead was going to participate in a rodeo event with Father.

- [5] This did not go over well with Mother. Mother sent Child several text messages saying Child “disappointed” Mother, Mother’s family, and “everyone involved in supporting” Child’s jumping career. Appellee’s App. Vol. 2 at 43. Mother also stated she was going to sell Child’s horses since Child failed to honor her commitments. *Id.* at 44. And Mother separately texted Father and stated that Child embarrassed Mother’s family by failing to participate in the charity event. *Id.* at 45.
- [6] Mother’s text messages did not go over well with Father. On September 2, 2020, he filed a Verified Petition to Modify Custody Without An Agreement, alleging that Mother’s text messages were emotionally abusive toward Child. He also alleged Mother was not meeting daughter’s educational needs, was taking illegal drugs, and was drinking alcohol to excess.
- [7] Mother responded with her own Verified Motion for Modification of Custody and Rule to Show Cause and Attorney’s Fees. She claimed Father had been leaving Child with his girlfriend’s children without any supervision and without offering Mother the opportunity for additional parenting time; that he failed to return Child to Mother after picking Child up for parenting time on August 30, 2020; that he blocked Mother’s phone number in Child’s phone so that Mother could not contact

Child; that his driver's license had been suspended 55 times; that he has been arrested over a dozen times; and that he was behind on child support.

[8] The trial court interviewed Child in camera and held an evidentiary hearing on March 10 and March 17, 2021. The court then issued an order on April 26, 2021, granting Father sole physical custody of Child and granting Mother parenting time on every other weekend and for three hours on Wednesday evenings. The trial court's order included findings of fact and conclusions of law, which summarized some of the evidence and legal standards. But the order did not make any factual determinations or explain how any of the legal standards applied to the evidence.

[9] Mother now appeals.

Discussion and Decision

[10] Mother asserts the trial court abused its discretion by modifying Child's custody so that Father has sole physical custody. We agree.

[11] The polestar for child custody determinations is what is the best interests of the child, but the best interests are determined differently for initial custody decisions than for modifying custody. For the initial custody determination, "there is no presumption favoring either parent." [Ind. Code § 31-17-2-8](#). Instead, the court assesses the child's best interests by weighing "all relevant factors," including the age and sex of the child; the parents' and child's wishes; the child's interactions with family members and others; the child's adjustment to their home, school, and community; the mental and physical health of those

involved; family violence; care by a *de facto* custodian; and a designation in a power of attorney of the child's parent or custodian. *Id.*

[12] After the initial custody determination, there is a presumption in favor of maintaining the status quo because generally “permanence and stability are considered best for the welfare and happiness of the child.” *Lamb v. Wenning*, 600 N.E.2d 96, 98 (Ind. 1992). The General Assembly has directed that a trial court may not modify child custody unless “there is a substantial change” in the statutory best interests considerations. I.C. § 31-17-2-21(a)(2). A substantial change requires more than isolated misconduct. *Collyear-Bell v. Bell*, 105 N.E.3d 176, 184 (Ind. Ct. App. 2018).

[13] Instead, the alleged change in circumstances is evaluated in the context of the child's environment, and the effect of the change on the child is what makes it either substantial or inconsequential. *In re Marriage of Sutton*, 16 N.E.3d 481, 485 (Ind. Ct. App. 2014). As a result, “a change that might be regarded as slight or inconsequential in one case might be catastrophic in another.” *Poret v. Martin*, 434 N.E.2d 885, 888 (Ind. 1982). And even if there is a substantial change, the trial court still can only modify custody if it is in the child's best interests. I.C. § 31-17-2-21(a)(1).

[14] Here, the trial court entered findings of fact and conclusions of law, which we review under a two-tier standard: first we determine whether there is evidence to support the findings of fact, and then whether those findings of fact support

the legal conclusions. *Campbell v. Campbell*, 993 N.E.2d 205, 209 (Ind. Ct. App. 2013). And when reviewing the evidence, we do not reweigh it; we simply look to ensure that there is some evidence to support the trial court’s findings. *Id.* In short, we give considerable deference to trial court findings in family law matters because the trial judge “is in the best position to judge the facts, to get a feel for the family dynamics,” and “to get a sense of the parents and their relationship with their children,” all of which are “qualities that appellate courts would be in a difficult position to assess.” *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 940–41 (Ind. 2005).

[15] The trial court’s order cannot withstand scrutiny under the second tier of review—its findings do not support the conclusion that “there is a substantial change” in one of the statutory factors listed above. I.C. § 31-17-2-21(a)(2). Rather, the court’s findings simply summarize the procedural history and allegations. For example, the trial court found that “Father alleged Mother had sent inappropriate text messages to the minor child over several dates,” Appellant’s App. Vol. 2 at 21 (emphasis added), but it did not find the text messages were in fact inappropriate, that they reflected a change in circumstances since the previous custody order, and that the change was substantial. Without any finding that there has been a substantial change related to the statutory best interests factors, the trial court lacked discretion to modify Child’s custody. See *Collyear-Bell*, 105 N.E.3d at 184 (custody modification requires “a finding by the trial court that (1) change would be in

the child's best interests, (2) a consideration of the factors listed above, and (3) a finding that there has been a substantial change in one of those factors”).

[16] We therefore reverse the portion of the trial court’s order pertaining to the custody modification and remand with instructions to the trial court to make specific findings explaining whether there has been a substantial change in the statutory factors since the previous custody order which warrant a custody modification. We do not disturb any other portion of the trial court’s order, including its determination of arrearages.

Vaidik, J., and May, J., concur.